

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5173 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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APNA CHEMIST & DEPARTMENTAL STORES

Versus

RANJITSINH WAGHELA

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Appearance:

MR PM THAKKAR for Petitioner  
MS B.R.GAJJAR ASSISTANT GOVERNMENT PLEADER  
for Respondent No. 1

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CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 18/04/2000

ORAL JUDGEMENT

I have heard Mr. Navin H. Pahwa, learned counsel for Mr. P.M.Thakker, learned counsel appearing for the petitioner, and Ms. B.R.Gajjar, learned Assistant Government Pleader appearing on behalf of the

respondent -Collector. Writ petition has been filed for quashing the order passed by the Collector -respondent on 5th July, 1990 Annexure: B to the petition. It is submitted by the learned counsel for the petitioner that Khambhat Nagar Palika issued public advertisement in the year 1983 for letting out shop premises. Accordingly, the petitioner applied for allotment of the shop and being highest bidder, shop has been allotted to the petitioner and the petitioner has deposited an amount of Rs.5,000/- as per condition of the advertisement. Thereafter, an agreement has been executed between Khambhat Nagar Palika and the petitioner in November, 1988 in respect of the shop premises and the petitioner has got the possession of the shop premises after execution of the agreement. Thereafter, the petitioner has spent huge amount and had started his business in the shop premises and he is still continuing in his business in the aforesaid shop premises allotted by the Khambhat Nagar Palika. Thereafter, by a complaint filed by certain person, the Collector initiated the proceedings and the Collector, without issuing notice to the petitioner, cancelled the allotment made by the Khambhat Nagar Palika. Learned Counsel for the petitioner submitted that the Collector should have heard the petitioner as he is in possession of the shop premises and is carrying on business after investing huge amount. Learned Counsel also submitted that by the order of the Collector, the petitioner will be deprived of his shop premises and since he has interest in the disputed shop premises, the Collector should have passed the order after hearing the petitioner. Learned Counsel also drew my attention to a decision of this court in 38(1) GLR 563 (POPATLAL SUNDARJI CHANDAN & OTHERS Vs. STATE OF GUJARAT). Learned Counsel submitted that in the aforesaid case, this court quashed the order of the Collector on the ground that the Collector before passing any order did not afford any opportunity of hearing to the persons who are affected by the order of the Collector. In the aforesaid case, it has been held by this court that no person can be visited with civil or evil consequences without they are given an opportunity of hearing. In the present case, the petitioner has been allotted the shop premises by virtue of an agreement executed between the Nagar Palika and the petitioners. It is an admitted fact that the petitioner who will be ultimately the sufferer on account of the impugned order of the Collector, had no notice, nor he has been given an opportunity of hearing. The Court further held that exercise of such power by the Collector is illegal and impermissible, without observing principles of natural justice. Learned Assistant Government submitted that

there is no requirement of law or the provisions of Section 258 of the Gujarat Municipalities Act do not contemplate issuing any notice to the petitioner or any person similarly situated to the petitioner. Learned Assistant Government Pleader submitted that the Khambhat Nagar Palika has issued allotment order, and therefore, before cancelling such order, it is necessary to hear the Nagar Palika and the Collector has heard the Nagar Palika and the complainant, and therefore, there is no illegality in passing the order by the Collector. I do not agree with the submission of the learned Assistant Government Pleader because a law has been settled by this court in the aforesaid case that the persons who are interested in the property should be heard and if no such opportunity is given to the affected persons, then this will be against the principles of natural justice. Having regard to the aforesaid decision of this court reported in the case of Popatlal (supra), I am of the view that the present order passed by the Collector suffers from the same mischief and the Collector should have given a notice to the petitioner who is highly interested in the land as he is carrying on his business in the shop premises after incurring huge expenditure. Since no notice has been issued to the petitioner and he has not been heard before passing the impugned order, I am of the view that the order dt. 27th June, 1990/5th July, 1990 passed by the Collector (Annexure:B to the petition) should be quashed. Accordingly the order of the Collector dt. 27th June, 1990/5th July, 1990 (Annexure:B to the petition) is hereby quashed. Accordingly the writ petition is allowed. Rule is made absolute accordingly. However, I make no order as to costs.

Date:18/4/2000. (P.K.SARKAR,J.)

ccshah